

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 2:16-CR-00021-PP
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Milwaukee, Wisconsin
)	
SAMY MOHAMMED HAMZEH,)	Monday, December 4, 2017
)	(2:01 p.m. to 4:10 p.m.)
<u>Defendant.</u>)	

BAIL REVIEW HEARING

BEFORE THE HONORABLE PAMELA PEPPER,
UNITED STATES DISTRICT JUDGE

Appearances:	See next page
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1 Milwaukee, Wisconsin; Monday, December 4, 2017; 2:01 p.m.

2 (Call to Order)

3 **THE COURT:** Court calls Criminal Case 2016-
4 CR-21, United States of America versus Samy Hamzeh. Please
5 state your appearances, starting with the attorney for the
6 Government.

7 **MR. KANTER:** Yes, good afternoon, Your Honor, Paul
8 Kanter on behalf of the United States.

9 **U.S. PRETRIAL SERVICES OFFICER CYRAK:** Liz Cyrak
10 present on behalf of Pretrial Services. Good afternoon, Your
11 Honor.

12 **MR. ALBEE:** Good afternoon, Your Honor, Craig Albee
13 and Joe Bugni, appearing on behalf of Samy Hamzeh, who's here
14 in person.

15 **THE COURT:** Good afternoon. Good afternoon,
16 Mr. Hamzeh.

17 **DEFENDANT HAMZEH:** Good afternoon.

18 **THE COURT:** We're here this afternoon, as you all
19 know, I think, because Mr. Hamzeh moved for release on bond,
20 and Judge Jones had an evidentiary hearing on that issue, and
21 there was also extensive briefing on it and at the end of the
22 hearing and after the briefing denied that motion and ordered
23 that Mr. Hamzeh remain in detention until his trial, which is
24 scheduled for February, and Mr. Hamzeh appealed and asked that
25 I conduct the de novo review of the bond determination, the

1 question of whether or not he should obtain bond.

2 Mr. Albee and Mr. Bugni filed a motion asking for
3 some expedited briefing ahead of this hearing, and I did grant
4 that. And there was a document filed, I think, on Friday,
5 which I've reviewed, just a five-page document. I did note in
6 that pleading that because a lot water had already passed under
7 the bridge, there had been a lot of documents, a lot of
8 information filed and provided to Judge Jones and all of that
9 is on the record. I did ask that whatever those filings might
10 be be truncated because I have looked at the information that's
11 already on the docket. So I've also reviewed what the defense
12 filed on Friday.

13 And, Mr. Kanter, I think the Government hasn't filed
14 anything in addition; is that correct?

15 **MR. KANTER:** That is correct.

16 **THE COURT:** All right. So that is where we are.
17 This is a de novo hearing on the question of whether or not
18 Mr. Hamzeh should be released on bond under any conditions,
19 pending the February trial, and I guess I'll ask how the
20 parties wish to proceed.

21 **MR. ALBEE:** Your Honor, we're happy to go ahead and
22 make our arguments.

23 **THE COURT:** Okay.

24 **MR. ALBEE:** Judge, I have probably about five or six
25 main minutes that I want to make here today. I realize the

1 Court has had the opportunity to review the extensive briefing
2 in this case, and there's probably much more in the way of
3 submissions in terms of transcripts than in the usual case, so
4 we're certainly relying on those things, and I won't cover all
5 those -- all those things again. I hope to hit about five or
6 six particular points.

7 First of all, I think it is important to keep in mind
8 that this is a gun case, not a terrorism case. That's
9 significant for at least three reasons. First of all, the
10 legal standards are different. There's no presumption of
11 detention in this case because it's a gun case. The law that
12 comes to us, Dominguez, is probably the leading Seventh Circuit
13 case, but several significant points would include that doubts
14 must be resolved in a defendant's favor; second, that the
15 Government has the burden of proving by clear and convincing
16 evidence that Mr. Hamzeh would currently pose a danger, not
17 just that -- it's not enough to show that there had been some
18 dangerous conduct in the past, yet the clear and convincing
19 burden is to show that he would pose a danger now if released.

20 And also, again, that burden would also require the
21 Government to show that there aren't conditions that would
22 reasonably assure the safety of the community. It's not -- in
23 no case can there ever be certain assurance in all. What they
24 have to show is clear and convincing evidence that the
25 conditions would not reasonably assured safety, which is a high

1 burden to meet.

2 Another significant difference because this is a gun
3 case, is that the sentences are different. I'll talk a little
4 bit more later, but the guidelines in this case, if there were
5 acceptance of responsibility, would be 24 to 30 months without,
6 I think, 33 to 41, I think, if you went to trial and lost.

7 And third, the safety concerns are certainly
8 different. This is a gun case, technically a tax -- a failure
9 to pay tax on a gun case. And while the criminal Complaint
10 certainly drew a lot of attention because of an alleged plot
11 that at one time supposedly existed, as Judge Jones found, that
12 that was entirely abandoned and Mr. Hamzeh had took affirmative
13 steps to dissuade anybody from even considering such a plan
14 because it was wrong; and so really the focus has to be on
15 what's the danger involved, given the only offenses that are
16 charged in this case.

17 My second point that I wanted to talk to the Court
18 about is that, you know, oftentimes when we come to court, you
19 don't know much about what the defendant you'd say has really -
20 - has been up to. We don't -- you know, they may be charged
21 with, okay, they bought cocaine on this particular date, and,
22 you know, we have some general information about what they are,
23 but we can't say with any specificity, you know, where they've
24 been or what particular things they've been doing during the
25 last few months, and that's fine. Again, the burden is on the

1 Government to show things.

2 This case is really different. We have -- the FBI
3 gathered so much data on Mr. Hamzeh over the course of several
4 months that we really can say that we know that he wasn't doing
5 things independently on his own that would cause us great
6 concern on his own. As we've -- in our submission on Friday,
7 we had learned in supplemental information from the Government
8 that they conducted 64 days of surveillance. Sixty-four times
9 there was surveillance. We've only been provided one of those
10 64 reports. Apparently, it's the Government's theory that that
11 isn't Brady material. I don't get that, and we'll file a
12 motion moving forward, but the fact that they had eyes on him
13 64 times and only one of those reports was deemed significant
14 enough to turn over would suggest that on those other
15 occasions, he's doing nothing that would give them pause, that
16 would give them reason to write up a report to provide to the
17 defense that would be potential trial evidence. So he's not --
18 again, I presume -- I don't have the reports, but I would guess
19 that it would be turned over if he were on his own going to
20 purchase guns, going to meet with people who are dangerous,
21 what have you; and instead, we have one report out of 64.

22 The informants appear to be meeting with him daily.
23 And again, there's little to indicate that he's doing anything
24 other than the conversations, which again, we've acknowledged
25 are alarming and we've addressed, but that there are particular

1 actions being taken by Mr. Hamzeh. They searched his home
2 after his arrest. Again, it's not a situation where there's a
3 stockpile of weapons or other things of concern. We didn't get
4 anything in the discovery that you'd look at and say, oh, you
5 know, that gives me danger concerns.

6 They took his phone and PlayStation, which can act as
7 a computer, and searched those things, and we haven't received
8 information that would cause anybody concern about what might
9 happen if he were released.

10 And they interviewed him after his arrest for a
11 significant period of time, three hours, and, you know, there's
12 nothing that was -- that developed additionally there. What we
13 do know is he's not doing anything on his own that's not with
14 these two informants. He's not involved in guns at any time.
15 He's not involved with extremist groups. He's not in chats
16 with people we'd be concerned about. His confederates are the
17 informants. He doesn't appear to be communicating overseas
18 with people to be concerned about. The plan only existed with
19 these informants.

20 And I know the Government at times has tried to
21 characterize this as a lone wolf, but a lone wolf acts alone.
22 He didn't act alone; he only acted with these other informants.
23 In those kind of cases, at least those that publicized in the
24 news where somebody does something, it seems like invariably
25 they search the home and find all sorts of things that would

1 have been alarming if somebody had searched the home earlier.
2 That's not the case here at all.

3 And as Judge Jones found, Mr. Hamzeh abandoned this
4 plan by the time of his arrest. I'll come back to this, but
5 also it's -- it's significant. These informants start working
6 for the FBI on Mr. Hamzeh in September 2015. There's not one
7 thing before September 2015 that would suggest Mr. Hamzeh had
8 been a significant danger, committed criminal offenses in his
9 life or been involved in any -- or had any interest in
10 terrorism or anything else before September 2015, when these
11 informants start working on him on a daily basis.

12 That kind of segues into my next issue. I did want
13 to just lay out a little bit for the Court why we think
14 entrapment is such a strong defense at trial, but also to point
15 out for the Court's consideration that entrapment is also a
16 sentencing issue in the event Mr. Hamzeh were convicted in this
17 case. It's mitigating because he didn't act on his own, and it
18 was only at the behest of these government informants pushing
19 him that these things occurred. So to have at least a little
20 bit of background on the facts there, I think, is important,
21 again, on the issue of guilt, but also on sentencing.

22 And so we've submitted the documents to the Court
23 that demonstrate that the informant Mike was working to get
24 Mr. Hamzeh to agree to get a machine gun. Mr. Hamzeh
25 repeatedly said he wasn't interested in getting a machine gun.

1 He might want a pistol because he was a delivery driver and
2 defending himself seemed like a good idea. That, of course,
3 wasn't illegal.

4 During the course of these conversations where
5 Mr. Hamzeh is saying I don't need a machine gun, that he
6 doesn't want one, and there's -- we have no evidence. Again,
7 they searched his computer, they searched his home, we have
8 nothing that says he's ever shopping for guns, other than
9 mentioning it to Mike on the occasions that are identified in
10 the pleadings; but it's really significant, Mr. Hamzeh says,
11 you know, at some point he's clearly pushed over the edge. He
12 says, you're stupid, you keep asking me the same stupid
13 questions over and over, you're stupid and a mother. And, you
14 know, because he's so frustrated that Mike keeps on raising the
15 same kind of things that he keeps on pushing him off and
16 deflecting him from, but that doesn't stop him.

17 That becomes particularly important because as I'll
18 talk about a little bit later, we have many, many conversations
19 that are unrecorded, and we have no idea what goes on during
20 those, but we can assume that they're at least as pushy as the
21 ones that are recorded where Mike knows that he is being
22 recorded.

23 Those -- and that shows that Mr. Hamzeh resisted.
24 That's relevant to entrapment. We submitted in the submission
25 on Friday to show how many phone calls were being made. Only a

1 fraction of those calls appear to be recorded. We don't have
2 the other ones. We don't -- we don't have recordings of all
3 sorts of daily meetings at work, so there's -- there's much
4 that -- there's much here that went on that we don't have any
5 information about.

6 In terms of whether there were any extra incentives
7 to get Mr. -- Mr. Hamzeh interested in what the informants were
8 selling, we do have the extraordinary inducement on cost with
9 this machine gun, which is, you know, below -- well below
10 rock-bottom price. I mean, it's just not real world in any
11 way, shape or form that somebody could buy one of those for
12 \$300.

13 Further, Mr. Hamzeh had no ability to do it on his
14 own. He didn't know anybody purporting to sell machine guns.
15 He didn't go out looking for anybody selling machine guns.
16 There's nothing to show that he wanted the machine gun other
17 than as finally giving in to Mike's persistence over a period
18 of two months with respect to the machine gun, and longer than
19 that with respect to other things.

20 Mr. Hamzeh doesn't have a criminal history, which is
21 relevant to entrapment; and we have the fact that we have a
22 paid informant, which I think will be significant for a jury.

23 Other evidence supportive of our position here,
24 Judge, is the contemporaneous recordings made in the week
25 before Mr. Hamzeh's arrest, when, of course, he has no idea

1 he's being recorded, while the informants always do. But even
2 then, when he's speaking to Steve about Mike, he says he
3 brainwashes you. He says that the Masonic plan was Mike's
4 idea. Again, he has no -- there's no benefit to him saying --
5 saying that and he has no idea he's being recorded, so it would
6 appear to be a contemporaneous state of mind statement.

7 He also notes at that time that Mike is telling him
8 that his life is in ruins. It's an appeal to sympathy by Mike.
9 Again, a manipulative type thing. He talks at length about all
10 the videos that he's been shown where he's been deceived,
11 manipulated, and exploited, where he comes to believe this
12 craziness about them, the Mason's being ISIS, something he had
13 never ever talked about before and which he says only came up
14 in the last month.

15 Notably, from December 14th, I think until January
16 19th, even though Mike has many contacts with Mr. Hamzeh, those
17 -- there are no recordings during that period, and that's when
18 after all this time of resisting his overtures, somehow this
19 Masonic plan allegedly comes together, which ultimately
20 Mr. Hamzeh rejects in its entirety; but how that came about, we
21 don't know, because it wasn't recorded, which is extremely,
22 extremely problematic.

23 In terms of other things that are more relevant, just
24 the sentencing, if there is such a thing.

25 **THE COURT:** Mr. Albee, do you want a peppermint or a

1 cough drop?

2 **MR. ALBEE:** Mr. Bugni got me some water.

3 **THE COURT:** Okay.

4 **MR. ALBEE:** I don't know if that will help.

5 **THE COURT:** I know you've got a --

6 **MR. ALBEE:** Thank you.

7 **THE COURT:** Sure.

8 **MR. ALBEE:** But as to sentencing, the -- the
9 Government chose what type of weapon would be -- or chose how
10 many weapons would be here. There's a considerable amount of
11 confusion during the course of these contacts about -- there's
12 mentions of AK-47s or Kalashnikovs, and, apparently, Mike has
13 one of his own, a semiautomatic assault weapon, which is legal,
14 and there's certainly confusion about what weapon this might be
15 and whether it could be registered, and some other things.

16 There's an extra count here, Judge, for the --
17 according to the Government's allegations, Mr. Hamzeh was
18 buying one gun and Steve was buying one gun. And they got
19 Mr. Hamzeh to carry the bag, you know, I don't know, 30 feet,
20 or something like that, and then they arrested him and they
21 charged him with possession of both guns for carrying it for 30
22 feet.

23 One thing we intend to explore in more detail is the
24 fact that these machine guns, you can go to Las Vegas and take
25 possession of one of these guns and shoot -- and shoot the

1 guns, and nobody gets charged for possession of the gun. They
2 don't get a transfer tax -- they don't pay a transfer tax to
3 use the gun or to use a silencer in those kinds of situations.

4 There are local places in Waukesha, and actually, I
5 went skeet shooting in September, I think it was, and I could
6 hear somebody shooting a machine gun. They let people use them
7 at these ranges, so there's nothing that appear to be deemed
8 illegal about somebody taking a momentary possession of such a
9 gun. And -- but again, either way, it's a sentencing
10 manipulation to have Steve buy a gun and have Mr. Hamzeh carry
11 it for a few feet and say you possessed that without paying a
12 tax.

13 And the last thing I guess I would say about
14 entrapment is I think Judge Jones did get it wrong in the sense
15 that he thought there were credibility issues to be resolved.
16 I think that's true at trial, but those have to be resolved at
17 this juncture in Mr. Hamzeh's favor. The Government hasn't put
18 a -- put together -- or shown a case here that says that
19 Mr. Hamzeh doesn't have a viable entrapment case at trial. And
20 I think Judge Jones also, instead of focusing on the gun case,
21 focused on the abandoned Masonic center claim, without thinking
22 through the enormous psychological pressures that would have
23 existed in that case. Anyway, I guess that's all I'll say
24 about that at this point.

25 I think the next point I wanted to make is that we

1 think without bail that there's a likelihood of irreparable
2 harm here. We think that because we think we have a viable
3 entrapment defense and so all this time that Mr. Hamzeh has
4 spent incarcerated would be lost time if he's found not guilty,
5 he will have spent almost two years in custody for not
6 committing any offense.

7 Beyond that, the guidelines, as we pointed out, are
8 approximately 24 to 30 months. At the bottom end of that
9 range, I think he would have already served his sentence.

10 Another concern we have about fairness and
11 irreparable harm is Mr. Bugni and I really need Mr. Hamzeh
12 available to us to prepare for this trial. It is about the
13 transcripts and recordings. Let me tell the Court it's a tall
14 task for us to -- even working with translators, to work with
15 these Arabic recordings and really just figure them out.
16 Mr. Hamzeh, even though he's -- he's not -- his English isn't
17 particularly great and it's certainly good enough to
18 communicate -- even with that, he would be able to help us
19 enormously in trying to understand the transcripts and which
20 ones that we should focus on.

21 So we'd certainly much rather have him in our office.
22 It's not really feasible to go down to Kenosha on a regular
23 basis to try to have him assist us with those transcripts.

24 Next is there are conditions here, Judge, that would
25 minimize any -- any minimal risks that exist here. We've

1 offered up that there's third-party custodians, his parents and
2 his sister, who he would live with, are here in the courtroom.
3 GPS certainly will ensure that he doesn't flee, but also, he'll
4 know that his location will be monitored at all times; and so I
5 think anybody under those conditions would know they can't go
6 places where they shouldn't or that would be problematic. He
7 could turn in his passport. He has a job waiting for him that
8 he can work at. As the Court knows, he has a decent employment
9 history in the past.

10 You know, frankly, Mr. Hamzeh's case is fairly
11 notorious at this point. I don't think he's going to be able
12 to go anywhere without being identified. Certainly, the
13 Government, having surveilled him for 64 days and invested all
14 these resources, I would guess would continue to keep an eye on
15 him no matter what. As I said, we have all these data points.
16 They searched his computer, they searched his house. We have
17 the fact that there's nothing before September 15 -- or
18 September 2015, and none of those things indicate that he's a
19 danger. He can report to Pretrial Services. So all those
20 things are there to minimize the risk.

21 The last thing I wanted to touch on, Judge, is really
22 what the Court has to look at in making the ultimate decision
23 about whether there's any danger here, and that is not to
24 decide whether, based on the allegations of the Government,
25 there was something dangerous in the past that would concern

1 us, but whether there's something dangerous moving forward.
2 And it can't be just some speculation about, you know, I have a
3 little discomfort about Mr. Hamzeh; it has to be clear and
4 convincing evidence that the conditions would not reasonably
5 assure safety. I think that requires the Government to say
6 this is specifically the crime that we're worried about him
7 engaging in if he were released, and there is nothing that they
8 can point to that they have evidence of that would rise to the
9 level of clear and convincing.

10 I guess the two things we look at are whether there's
11 some worry about him being involved in anything relating to
12 terrorism, at least that's been the Government's theory that
13 they've been pushed. We can look at how firmly he disavowed
14 and how adamantly he refused to go through with this plan. The
15 Court has seen his words, he got so frustrated and upset and
16 desperate at one point that he said, "goddamn your religion,"
17 because the informants kept fighting back against him and
18 trying to bait him into going through with this, but he was
19 adamant.

20 He was so adamant that he had the courage to go see
21 an imam and to go to these folks and use every bit of
22 persuasion that he could possibly have. He argued about their
23 self-interest, about why they clung to it, he argued on moral
24 grounds, he argued on religious grounds, and became angrier and
25 angrier as they resisted him.

1 But that was -- given the psychological information
2 we've provided to the Court and we'll provide at trial, I mean,
3 things like the electric shock experiment that we all know
4 about or Stockholm syndrome or all -- the Stanford prison
5 experiment, all sorts of things we know that the social
6 influence factors when one person is being manipulated by
7 multiple people and how susceptible human beings are to that,
8 that Mr. Hamzeh standing up and saying I won't do that is a
9 very strong reason to believe that he won't consider anything
10 if he's released. Not only does he have two years in jail to
11 show him that, he had already figured it out before being
12 arrested. He has his family who he's very close to that will
13 be putting that message in his ear on a regular basis. He has
14 the community, many of whom are in this courtroom today and
15 many of whom were at the last hearing. They're going to give a
16 resounding response against any such thing. He's got his
17 lawyers in his ear, and this is all punctuated by the two years
18 he's spent in jail.

19 So there's just nothing that would show that he would
20 be involved in that kind of thing. He doesn't have any
21 confederates other than the confidential informants. He's not
22 a member of any organization. He doesn't have any opportunity
23 to be involved in any of that kind of activity. At the end of
24 the day, when we look at all the surveillance and everything
25 else, they didn't have him do anything to anybody to cause

1 harm. There were even times where he was talking to the
2 informants and he's like, let's go tear down that flag, either
3 like a French flag or an Israeli flag, and then he'd say, nah,
4 I don't want to do it. I mean, he just -- he talked big but
5 did nothing.

6 And the other thing we know from his computer and
7 from the search of his house is he never researched -- he never
8 researched guns. And that's the second -- that's the second
9 thing, is the only other crime they might point to is do we a
10 worry about him having guns. He never had them before, never
11 bought them before, never shot them before Mike took him to the
12 range. Never -- he's got third-party custodians. The family
13 didn't have any in the house. He doesn't have money for guns.
14 He knows the consequences. There's absolutely no reason to
15 believe he would be able to acquire a gun or have any desire to
16 if he's released in this -- in this case.

17 Again, instead of two CIs in his ear all the time
18 trying to get him to do the wrong thing, he's got family,
19 community, and his lawyers telling him to do the right thing,
20 and I have every reason to believe Mr. Hamzeh would be a model
21 pretrial release candidate.

22 So in closing, I just again point out that before
23 September 2015, before these informants started working for the
24 FBI, there's nothing to show in those 23 years that Mr. Hamzeh
25 was engaged in serious criminal conduct, and there's no reason

1 to believe that if released, he wouldn't be the person he was
2 for those 23 years but more mature, somebody who works,
3 somebody who's with his family, somebody who plays video games
4 in his spare time, and somebody who's not a danger to the
5 community; and after two years in custody and facing a
6 guideline sentence that's about two years, we think he should
7 be released so he can help his lawyers in this case and be with
8 his family, because there's no showing that he is a danger if
9 released in this case, Your Honor.

10 **THE COURT:** Thank you, Mr. Albee.

11 Mr. Kanter.

12 **MR. KANTER:** Thank you, Judge. As the Court has
13 already noted, this matter has been rather extensively briefed.
14 I think there's probably been more briefing and more evidence
15 submitted in this particular bond hearing than in perhaps any
16 other such hearing that has ever been heard, certainly in this
17 district and maybe in most others around the country. And so
18 the Government, as you noted, did not file any additional
19 briefing because we're comfortable in relying on the brief that
20 we filed before the magistrate, which was filed on July 10th of
21 this year, as well as the submission of the post-arrest
22 interview, which was provided to the Court, and I believe that
23 you have available to you -- I hope that you have available to
24 you.

25 I realize that it's about three hours long, and the

1 Government -- and I'm sure the defense would agree with this,
2 is more than willing to provide you with time references to
3 that if you would like it. On the other hand, Judge, I would
4 encourage you to take the time, if you can find it, to review
5 the entirety of that, because I'd be the first to tell you that
6 I think context for statements that are made in that
7 post-arrest interview are important, as opposed to just pulling
8 out words or maybe brief phrases, so I would encourage you to
9 do that.

10 And, of course, the Government also does rely on
11 the -- on the conclusions and the decision, ultimate decision,
12 that the magistrate judge came to in his October 26th decision
13 of this year.

14 That having been said, Judge, at the risk of taking
15 too much of the Court's time, I would like to review some of
16 the evidence and set forth the Government's argument as to why
17 the Government still maintains -- continues to maintain and,
18 quite frankly, always will maintain until a decision at trial,
19 that Mr. Hamzeh should remain detained, for both risk of flight
20 and, more particularly, for danger to the community.

21 I -- before getting into my prepared remarks, I would
22 like to just respond to a couple of things that were raised
23 here in open court by Mr. Albee. I can't -- I'm not going to
24 tick off an answer to each one of them. There were a couple of
25 them that struck me, and most of everything else that he

1 addressed, I believe, will be addressed or covered in my
2 prepared remarks, but he made the -- he opened his remarks by
3 saying that this is not a gun case. Judge, with all due
4 respect to Mr. Albee or to anybody else, that's rather like
5 saying that this -- excuse me, this is just a gun case.

6 **THE COURT:** Right.

7 **MR. KANTER:** That's rather -- this is just a gun
8 case. That's rather like saying that Al Capone was prosecuted
9 on just tax charges, which we all know is not true, or more
10 currently, that Mr. Flynn is being prosecuted just on making
11 false statements to the FBI. We all know that that is not
12 true.

13 You, as a former prosecutor, know that we have a
14 limited number of charges to pick from, and we have to work
15 with the -- with the criminal defenses that Congress has given
16 us to work with. In this particular case, because of the way
17 the case unfolded and because of the technicalities, legal
18 technicalities of this case, we do not have a material support
19 prosecution available to us.

20 For example, the reason for that is very clear. In
21 his post-arrest statement, Mr. Hamzeh says, "We're doing this"
22 -- excuse me, actually, it was in a recorded statement shortly
23 after their tour of the Masonic Center, where Mr. Hamzeh says,
24 "We're doing this for us." And I'll refer to that in more
25 detail in a little bit, but we're referring -- we're doing this

1 for us, we're not associated with anybody else.

2 That's a technical requirement of Section 2339(b),
3 that we be able to relate material support to an identified and
4 named foreign terrorist organization.

5 I raise that not to get into an argument about it
6 with Mr. Albee or anybody else, but just to say that we use the
7 criminal offenses available to us to address what we
8 perceived -- what we believe, we submit to you and to a jury
9 not long from now, is a very serious criminal situation here.

10 The second thing that I -- I would just like to touch
11 on, and again, I will cover it but not directly, necessarily,
12 in my prepared remarks, is the suggestion that because there
13 was all this surveillance done and the FBI didn't see anything
14 through all of these periods of surveillance or there was this
15 search that was done and the FBI didn't find anything during
16 this detailed search that they did of the home, the parents'
17 home, by the way, is somehow indicative that there was no
18 criminal activity afoot.

19 As you might guess just from what you probably
20 already know about this case, cases like this, and this case
21 specifically, are dependent upon what we refer to as
22 operational security. And, in fact, one of the reasons, as I
23 will get into here in a few minutes -- one of the reasons why
24 Mr. Hamzeh called off this particular attack is because he
25 perceived that there was a breakdown in their operational

1 security, that there was a leak, and that other people in the
2 community were suddenly aware of -- aware of what was going on,
3 and that they were going to be discovered and arrested,
4 prosecuted and punished. And so it's not surprising, quite
5 frankly, that the FBI didn't find a lot because the criminality
6 that was afoot required operational security and extreme
7 secrecy.

8 Having said that, let me get into a couple things
9 that I'd like to cover with the Court and, hopefully, I won't
10 be too long, but I think these --

11 **THE COURT:** Mr. Kanter, you all have as much time as
12 you want.

13 **MR. KANTER:** Thank you, Judge. I think that these
14 things are important, and I would like to take exception, with
15 all due respect, to a statement that was included in the
16 defense's motion for review of the magistrate's bond
17 determination. And in -- in that motion it is said --
18 actually, it said four times on page 11 of the November 22nd
19 motion for review that the magistrate had found or concluded or
20 identified a, "viable entrapment defense." I can tell you,
21 Judge, that when I first read that in the motion, I was
22 surprised. It bothers me -- it bothered me a lot, and I spent
23 a great deal of time reading and rereading the magistrate's
24 decision. I probably read it more than any other document so
25 far in this case, at the least with regard to the documents

1 filed with regard to release. And I can assure you that there
2 is no finding, no reference, no suggestion by the magistrate
3 judge whatsoever that Mr. Hamzeh possesses a viable entrapment
4 defense. It is not in that finding.

5 The magistrate's reference -- there are two, and I'm
6 going to reference both of them. The magistrate's only
7 reference to the entrapment defense is actually found on page
8 13 and 14 of his decision, and he's talking about the weight of
9 the evidence. In a paragraph or two above that, he talks one
10 view of the weight of the evidence is this, and in his only
11 reference to entrapment, he says in -- and I'm quoting:

12 "In another view, the view of Mr. Hamzeh, the weight
13 of the evidence favors release because it establishes
14 that federal agents entrapped Mr. Hamzeh. As the
15 United States points out, the entrapment defense is
16 for the jury and it rests on the demeanor and
17 credibility of evidence, precisely the type of
18 evidence that I have not had an opportunity to
19 review."

20 That is true, entrapment is not for this hearing,
21 it's for the trial. It's for a jury to decide at trial.

22 What is fair to say at this point in this proceeding,
23 is that at this point, at this stage, all the defense has done
24 is put forward nothing more than what the magistrate referred
25 to in his only other reference to entrapment in his decision,

1 which is on page 20, that, "There's an intriguing entrapment
2 argument." That's it. So there is no viable entrapment
3 defense that the magistrate identifies, finds or deals with.

4 I would note, and in case there's any doubt about it,
5 Judge, that the defense -- excuse me, that the Government
6 specifically denies entrapment in this case. We are fully
7 prepared to defend our investigation and all the actions we
8 took during the course of that investigation at trial; and if
9 it is appropriate, and only if it is appropriate, based on your
10 determination that it is appropriate, will that question ever
11 be submitted to the jury to determine. It's for you to decide
12 in the first instance whether or not there's an issue of
13 entrapment to be even presented to the jury. If you do that,
14 we are fully prepared for the jury to deal with that particular
15 issue.

16 Now, in that same motion for review that the defense
17 filed here back on November 22nd, there is a statement in
18 there, it's on page nine, that the Government completely does
19 agree with, and I'd like to read it to you. On page nine, they
20 say, "Facts, not fear, must control the detention decision."

21 Indeed, let's talk about the facts. Let's put aside
22 what is at this point in time nothing more than an entrapment
23 theory developed from the counsel by counsel and look at the
24 facts that are before the Court.

25 Now, it's interesting, I want to state, that I

1 believe that the facts that I'm about to recite are actually
2 undisputed, because unless I misunderstand the filings that
3 the defense has made up until this point in time, arguments
4 that have been made in court, I don't believe that they are
5 going to disagree or dispute anything that I'm about to say.
6 They might have a different spin on it, they might have a
7 different argument, but I don't believe that they disagree with
8 any of these facts. So let's go through them.

9 First, we begin in the fall of 2015. During that
10 time, in the fall of 2015 and leading up to -- into December,
11 roughly, of 2015, Mr. Hamzeh talked repeatedly, repeatedly,
12 recording recorded conversations, about traveling to Jordan,
13 Israel and Palestine. He talked about attacking Israeli
14 soldiers and citizens. He described using a handgun to kill
15 Israeli soldiers and then take the soldier's machine gun and
16 kill as many people as possible before he expected and fully
17 anticipated to be killed himself. He said that he expected to
18 die, he expected to be a martyr. He wanted to die and be a
19 martyr.

20 At one point he even talked about donning an
21 explosive vest -- if he wasn't able to get either a handgun or
22 a machine gun, donning an explosive vest and exploding that
23 vest on either a bus or in a restaurant. This is in the fall
24 of 2015, leading up to the events of January of 2016.

25 Now, it is true that Mr. Hamzeh talked about

1 acquiring a handgun. There's no doubt about that, it's
2 recorded. Talked about a handgun for self-defense because he
3 was a delivery person at that time. He was delivering food
4 around the city for a restaurant, and he talked about getting a
5 handgun, and he talked to one of the cooperators about getting
6 a handgun for self-defense.

7 We come now to January of 2016, and Mr. Hamzeh is
8 focused by this point in time, early part of January of 2016.
9 He's focused, he's obsessed, you might say, with the Masons.
10 In his post-arrest statement, he says that his obsession was
11 his idea, it came from him, it originated with him, and he got
12 it from watching YouTube videos. Specifically, these are
13 quotes taken from the recording. I'm going to read them to
14 you. This is what he said:

15 "I got the idea about it. Then I told them" --
16 meaning the cooperators. "Then I told them about it.
17 I'm the one who told them about it, to be honest with
18 you. I'm the one who told them about it, and I'm the
19 one who stopped it. The other two guys" -- this is
20 still a quote.

21 "The other two guys, they were listening to me. I
22 was telling them everything. I am more religious
23 than them. I know more than them, so they believe
24 me. They do anything I want to do. I'm controlling
25 the thing. I was controlling them."

1 Those are Mr. Hamzeh's words.

2 On January 19th of 2016, Mr. Hamzeh took a tour,
3 admittedly with the two cooperators, of the Masonic Center here
4 in Milwaukee. Actually, it's only about two blocks, a little
5 north and east, of where we sit right now. You can probably --
6 I guess you can't see it through this window, we're not high
7 enough.

8 During that particular visit to the Masonic Center,
9 which I think it is fair to characterize as a reconnaissance
10 operation, he learned the schedules and the lay -- schedules of
11 meetings, he learned the layout of the building, he learned
12 that approximately 30 people were present at the meetings. And
13 after touring the center, Mr. Hamzeh is recorded saying the
14 following, and I quote -- it's specifically in reference to the
15 30 people that he anticipated encountering:

16 "Thirty is excellent. If I got out after killing 30
17 people, I will be happy, 100 percent, 100 percent
18 happy, but these 30 will terrify the world. The
19 motherfuckers will know that nobody can play with
20 Muslims."

21 He went further in that same conversation after the
22 tour about detailing his attack plan. This is what he said
23 about the attack plan:

24 "We want two machine guns" -- this is Mr. Hamzeh
25 speaking. It's recorded.

1 "We want two machine guns. You now have one" --

2 He's referring to one of the cooperators who he
3 believed had a gun.

4 "You now have one, so we want two more. We need
5 three silencers, that's it. Find out how much
6 altogether these will cost, then we will march. If
7 each one has a weapon, each one has a silencer gun,
8 the operation will be 100 percent successful. I am
9 telling you to go without silencer gun, you will be
10 exposed from the beginning."

11 About the actual attack, quote, Mr. Hamzeh, recorded:

12 "All three of us go in together. One will go to the
13 one that is staying at the reception. If she is
14 alone, it is okay. If there were two of them, shoot
15 them both. Do not let the blood show. Shoot her
16 from the bottom, two or three shots in her stomach,
17 and let her sit on the chair and push her to the
18 front as if she is sleeping. Do you understand?"

19 He goes on, "After shooting the" -- Mr. Hamzeh,
20 quoting, recorded:

21 "After shooting the receptionist, the lookout was to
22 stay downstairs. The other two will take the lift to
23 the third floor, go directly to the room, open the
24 door, shoot everybody. One of us will stay at the
25 door at the entrance and lock the door down. He will

1 be at the main door down. Two will get to the lift
2 up. They will enter the room and spray everyone in
3 the room. The one who is standing downstairs will
4 spray anyone he finds. We will shoot them, kill them
5 and get out. As long as the one on the door
6 understands he has bigger responsibility than the
7 others. For your information, he has to take care of
8 everyone around him. The comers and the one that
9 wants to go. He has to annihilate everyone. There
10 is no one left. I mean, when we go into a room, we
11 will be killing everyone. That's it, this is our
12 duty."

13 Hamzeh continued to explain his escape plan.

14 Quoting:

15 "Move fast, even avoiding" -- excuse me, "Move fast,
16 even avoiding the lift and take the stairs running
17 down. Using the stairs, the third one on the door
18 will notice us coming down. We will go out together.
19 No one sees anything and no one knows anything. We
20 leave, as if there is nothing. No running, no panic,
21 just regular walking. We'll get three head covers,
22 three holes in them. We will walk and walk. After a
23 while, we will be covered as if it is cold, and we'll
24 take the covers off and dump them in a corner and
25 keep on walking as if nothing happened, as if

1 everything is normal."

2 And finally in this conversation, he explains his
3 motivation for this attack that he's talking about. Quote,
4 Mr. Hamzeh, recorded:

5 "They are all Masonic. They are playing with the
6 world like a game, man, and we are like asses. We
7 don't know what is going on. These are the ones who
8 are fighting. These are the ones that needs to be
9 killed, not to the Shia, because these are ones who
10 are against us. These are the ones who are making
11 life living for us like hell. I am telling you,
12 if this hit is executed, it will be known all over
13 the world. Sure, all over the world. All the
14 Mujahideen will be talking, and they will be proud of
15 us. What is wrong with you? Such operations will
16 increase in America when they hear about it. The
17 people will be scared and the operations will
18 increase, and there will be problems all over. This
19 way we will be igniting it. I mean, we are marching
20 at the front of the war. We are Muslims defending
21 Muslim religion. We are on our own, my dear. We
22 have organized our own group. We have our own group,
23 not with Hamas, not with any ass. We are here
24 defending Islam. Young people together joined to
25 defend Islam, and that's it. That is what our

1 intention is."

2 Those are the words of Mr. Hamzeh.

3 After the tour and after these conversations,
4 Mr. Hamzeh sought, through cooperation with one of the
5 cooperators, the acquisition of automatic weapons, that being
6 machine guns and silencers. On January 24th of 2016,
7 Mr. Hamzeh met with the two cooperating witnesses and canceled
8 the attack, but Mr. Hamzeh provided two reasons for canceling
9 his attack.

10 First, as I mentioned before, the plan was leaked.
11 Let me read you a recorded -- parts of a recorded conversation
12 that he said about that. These are Mr. Hamzeh's words again
13 recorded:

14 "First, I have discovered that there has been
15 something leaked. This has been leaked. I swear if
16 we do this anywhere in the United States, they will
17 know that it is us. They have eyes and they will
18 come and investigate us. I am saying that
19 information about us has been leaked in the past
20 two days. I felt like our information is becoming
21 well known. That's Point Number One. Point Two, I
22 went and I spoke with the Sheikh."

23 So let's talk about Point Number Two. He did consult
24 with an imam, and the imam here in Milwaukee, at a mosque here
25 in Milwaukee, and that imam, very thankfully, told him that if

1 he went through with his plan, he would go to hell. Later that
2 evening, at the urging of the other two individuals, the two
3 cooperators, he decided to consult with a second imam, and he
4 called his uncle in Jordan and consulted with his uncle; and he
5 was told the same thing, that if he carried through with the
6 attack, he would go to hell, and as a result, the attack was
7 canceled.

8 And yet, on January 25th, the very next day, and
9 completely according to the plans that they had laid out,
10 Mr. Hamzeh went ahead with the purchase of the weapons, as
11 previously had been arranged. Before going to that purchase,
12 however, he explained to the cooperators why, despite the fact
13 that the attack had been canceled, he was going ahead and
14 purchasing these weapons. It's recorded. These are
15 Mr. Hamzeh's words:

16 "We're going to get the weapons and we'll keep it
17 here. We will get the weapons normally and we can
18 train with it and keep it with us, just as a
19 precaution until the next year as well. You never
20 know what will happen the next year. Next year a new
21 president is taking over, and you don't know what
22 will happen with us. Our weapons will come and we'll
23 hide it. Get ready, prepare, buy. Be prepared for
24 that day so that when they attack us, then we can
25 attack them. We must be ready. Why do we get the

1 weapons?"

2 Still quoting Mr. Hamzeh.

3 "Why do we get the weapons? Why" -- excuse me, "Why
4 do we go get the weapons? Because we want to make
5 sure that your friend" -- the supplier -- "to ensure
6 that he's on board to trust us so that in the future,
7 if we need more, he will be accommodating to us. But
8 if we don't go, he will think they are dragging their
9 feet. But for the weapons, I am ready to go get it
10 tomorrow."

11 Again, those are the words of Mr. Hamzeh.

12 Now, during his post-arrest interview, which you have
13 a copy of, Mr. Hamzeh, during that interview, admitted the
14 following, and you can check it by reviewing the interview. He
15 admitted purchasing the weapons, knowing that the weapons
16 purchased were two fully-automatic machine guns and a silencer.
17 Knowing -- he admitted knowing that the purchase was illegal.
18 He admitted conducting an illegal gun purchase because he
19 couldn't afford to buy the weapons legally.

20 He admitted that he planned and intended an attack on
21 the Masons. He admitted that he believed the Masons to be
22 devils, based on YouTube videos that he had reviewed; and that
23 as devils, they were the enemy of Islam.

24 He admitted that he became concerned about offending
25 God, and as a result, he consulted two imams, who told him, no,

1 don't go through with this attack. It's against Islam.

2 He admitted -- and this is critical, he admitted that
3 he had no concern for government, the police, or laws. He
4 admitted that his only concern was God and whether or not he
5 would get to heaven and avoid hell.

6 And finally, and most importantly, he admitted that
7 if the imams had told him that it was all right, he would have
8 executed the plan. Let me repeat that, he admitted to the
9 interviewing agents that if the imams had said his plan was all
10 right, he would have gone ahead and executed the plan. Those
11 are the facts.

12 And again, from my understanding, from what I've read
13 from the defense, what I've heard them say, I don't think that
14 they have any disagreement with those facts.

15 So the question then becomes, based on those facts,
16 what conclusions can we draw, should we draw, from those facts
17 in making the decision that you have to make today. So I'd
18 like to submit some conclusions based on those facts.

19 First, we can conclude that Mr. Hamzeh simply was not
20 entrapped. He simply was not entrapped. During his
21 post-arrest interview, he took responsibility for everything,
22 personally he took responsibility. It was his opportunity to
23 throw up his hands and say, huh, thank God you guys got me,
24 thank God you're here, I'm so relieved, these guys have been
25 pressuring me into this conduct, and I didn't know how to get

1 out of it, I went along with them only because they scared me,
2 thank God you got me, I'm sorry, I'll help you any way I can.
3 He didn't say any of that. He accepted full responsibility,
4 said it was his plan, said he had developed the information
5 from which he concluded, based on viewing YouTube videos, that
6 the Masonic Center needed to be attacked, his plan. So we can
7 conclude that there was no entrapment here whatsoever.

8 We can also conclude that Mr. Hamzeh clearly knows
9 the difference between defensive weapons and weapons of war.
10 Handguns, by his own word, are guns for self-defense. Machine
11 guns are weapons of war, they are designed specifically for a
12 mass casualty attack. So depending on your purpose, depending
13 on what you want to accomplish, guides, compels the type of
14 weapon that you need. Driving around making deliveries in the
15 inner city requires a handgun. In fact, it would be quite
16 ridiculous to try and self-defend oneself in that situation
17 with a fully-automatic weapon. So we can conclude very clearly
18 that Mr. Hamzeh knows the difference between defensive weapons
19 and weapons of war.

20 We can also conclude that Mr. Hamzeh is fully willing
21 to engage in illegal conduct when it suits his purpose, when he
22 deems it to be necessary. Why do I say that? Because on
23 January 25th of 2016, Mr. Hamzeh decided that he wanted those
24 weapons, and he knew that purchasing them was illegal, and he
25 went ahead anyway. And so he's fully willing to engage in

1 criminal conduct, illegal conduct, that suits his purpose,
2 whenever it suits his purpose.

3 We can also conclude that Mr. Hamzeh went ahead with
4 the purchase of the firearms to have the weapons available to
5 him if required for a future attack. Those are, in fact, his
6 words. He went on to say that he wanted to practice, he wanted
7 to train, he wanted to be ready for a future attack. And he
8 wanted to keep those gun dealers happy, because if they needed
9 more guns in the future, he wanted to make sure that that
10 source of cheap, illegal, untraceable guns was available to him
11 if he decided that he needed them, if he deemed it necessary.

12 We can also conclude that Mr. Hamzeh has absolutely
13 no respect for the law, for government, and for this Court
14 because that, again, is his words. That's what he said. You
15 can hear them on the recordings. His loyalty and his respect
16 is -- by his words, is only to God, and his only motivation is
17 to avoid hell and to get to heaven. And yet, he needed to
18 consult on that. He needed to consult a religious leader on
19 that, two of them, because he had some doubt about the fact
20 that mass murder might be okay under certain circumstances.
21 That's the only conclusion that one can draw.

22 The magistrate was, in fact, correct when he wrote in
23 his decision, it should not take the spiritual guidance of two
24 religious leaders to dissuade a person from committing mass
25 murder, and yet Mr. Hamzeh felt a need to do that because maybe

1 that imam would have said, go for it.

2 And the other thing we can conclude from that is that
3 you can expect him to apply that same attitude to whatever
4 order you enter. Whatever conditions of release you might
5 enter, he'll take that same attitude. I don't care about the
6 government, I don't care about the law, I don't care what that
7 judge told me, I'm only going to do what I think God wants me
8 to do.

9 And finally, and I submit most importantly, we can
10 conclude that Mr. Hamzeh abandoned a target, not a plan. Let
11 me repeat that. He abandoned a target and not a plan. Twice
12 during that interview with the agents after his arrest, when he
13 had every opportunity to say otherwise, he told the
14 interviewing agents that if the imams had told him his conduct
15 was acceptable to God, he would have carried out the attack.

16 Again, the magistrate judge was quite correct in what
17 he wrote in his decision. It's interesting what he wrote.
18 It's interesting the words he chose. He did it twice. I'm
19 going to read it to you. On page 3 of his decision, toward the
20 bottom, in the last paragraph, he writes -- the magistrate
21 writes:

22 "The recorded conversations indicate that there were
23 a number of motivations to proceed with the purchase
24 of the weapons, but none of them involved current
25 plans to conduct offensive or terrorist activities."

1 Indeed, current plans, he abandoned a target. Later
2 on, on page 18, the magistrate wrote much the same.

3 "I am convinced that he," meaning Mr. Hamzeh, "had
4 firmly resolved not to engage in an offensive attack
5 at the time he purchased the weapons."

6 At the time he purchased the weapons. The magistrate
7 got it right, because all Mr. Hamzeh did was abandon a target
8 and not a plan. Going through with the purchase of the weapons
9 on the 25th of January of 2016 is proof of that because by his
10 own words again, he's stockpiling weapons. He's wanting to
11 practice. He's preparing to train, and he is keeping his
12 suppliers happy because he might need them again for a future
13 attack.

14 Now, the defense counsel has raised, and I think they
15 even raised it here in open court, they've raised it a number
16 of times, they've raised the case of United States versus
17 Dominguez, 783 F2d. 702 at 707, a 1986 decision of the Seventh
18 Circuit Court of Appeals. And the quote that they give I think
19 is important, because what the quote says is that the
20 Government's burden and the Court's finding of dangerousness,
21 "cannot be based on evidence that he has been a danger in the
22 past." But then it goes on, "Except to the extent that his
23 past conduct suggests the likelihood of future misconduct."

24 "Except to the extent that his past conduct suggests
25 the likelihood of future misconduct." Indeed, that's exactly

1 what we have here. We have every reason to distrust
2 Mr. Hamzeh's current statement that he isn't going to carry out
3 an attack, to distrust and disbelieve any statement that he
4 makes that he didn't really mean it at the time. And
5 primarily, that distrust -- almost exclusively that distrust
6 comes from not witnesses, not third parties, not physical
7 evidence, but from his own mouth, from his own words, both
8 before and after his arrest.

9 Judge, the United States has satisfied the respective
10 burdens that Mr. Hamzeh remains a danger to the community and
11 is a risk of flight, and I ask you, most respectfully, to
12 affirm his pretrial detention.

13 **THE COURT:** Thank you, Mr. Kanter.

14 Mr. Albee, your rebuttal.

15 **MR. ALBEE:** Judge, prior to September 2015, the
16 Government hasn't identified one thing that Mr. Hamzeh ever did
17 wrong in his life, not until it inserted these two informants
18 into his daily life, including having one to go work with him
19 and deal with him on a daily basis. Every single day, these --
20 these informants would listen to Mr. Hamzeh, they would -- not
21 literally applaud but applaud any outrageous statement, promote
22 any outrageous statement. He would get some approval from them
23 anytime he had something to say that suited their needs, their
24 needs being to collect outrageous statements. And they thought
25 they had a big one on the line.

1 In October, just one month into this thing, they
2 thought they had Mr. Hamzeh traveling to the Middle East. He
3 was full of BS. He didn't have the money he said he had. He
4 didn't have the arrangements that he said he had. He didn't
5 have any of that. And that was his MO throughout this time, is
6 to talk and to do nothing.

7 These outrageous statements he made, which to all of
8 us in this room, in this area, probably sound more outrageous.
9 I didn't grow up in a Palestinian/Israeli conflict that goes on
10 decade after decade. And -- now, I know from here, when this
11 country's been in war, I hear people say outrageous things when
12 the Persian Gulf War was going on. I hear people say
13 outrageous things about Iraqis. I've seen movies where they
14 said outrageous things about Japanese after World War II. I
15 grew up with people who talked about the IRA and had outrageous
16 things to say about what they'd do to the British. But these
17 people don't act on these things. People talk a lot more than
18 they act, and Mr. Hamzeh did nothing. There's not even any
19 evidence about him talking before September 2015 and these
20 informants being in his ear, but there's certainly no evidence
21 of any action on his part.

22 And then what happens after he -- after he -- he just
23 BS's Steve about this supposed plan to which there's no
24 evidence of him doing anything other than talking about it.
25 They continue monitoring and pushing him for the next couple

1 months. And Mike, Mike alone introduces machine guns.
2 Mr. Hamzeh has never -- there's no indication that he ever shot
3 a gun. Mike, after working with him for a couple of days,
4 brings a gun to work, shows it to him, says look at this cool
5 gun, starts talking in these trumped-up terms, inflammatory
6 terms, to get Mr. Hamzeh to talk about things.

7 You hear in the conversations of the translations
8 that many times they're just laughing. They're just saying
9 outrageous things to be outrageous. But Mr. -- Mike takes him
10 shooting, again starts saying, well, do you want a machine gun?
11 And he's always like, no, I want a pistol. Stop -- you're
12 always asking the same stupid questions over and over and over
13 again, and he does nothing.

14 This operation -- this FBI operation, when it hits
15 early January, is at a stand-still. They have nothing. They
16 have invested three months of -- of manpower, of paying
17 informants, of all these things during that time and they have
18 nothing on Mr. Hamzeh; and they've stopped even recording
19 conversations with Mike, even though he's seeing him on a daily
20 basis. And then all of a sudden on January 19th, after 35
21 days, Mike's recording again. And we see in the -- we see in
22 the -- in Mr. Hamzeh's post-arrest statement, we see in the
23 contemporaneous recordings that he's saying Mike introduced
24 these videos, that it was Mike's idea.

25 Well, your Honor, Mr. Kanter, with all due respect,

1 took a lot of things -- a lot of things out of context, a lot
2 of things for which there's contradictions in the words that
3 are said. And certainly Mr. Hamzeh, in that post-arrest
4 interview, you can see he's protective of his friends. He does
5 not know he's been duped, exploited and manipulated daily for
6 four months, he has no idea, so he's protective of these
7 people. What he's adamant about is that he wasn't going to do
8 it.

9 And the question is why is it not recorded when this
10 plan is developed and created at the behest of Mike, who's
11 showing these videos. Mr. Hamzeh didn't come up with some
12 ideas that Masons were ISIS on his own. There's no indication
13 he ever knew of the Masons or anything about it until something
14 happens where they're having conversations that aren't recorded
15 for some reason, even though it's a paid FBI informant. So why
16 is that? Because they're using the psychological manipulation
17 that, you know, the experiments that we've shown the Court
18 exist, they work.

19 And Mr. Hamzeh, in that post-arrest -- the
20 post-arrest statement, I'll just find, you know, a few -- a few
21 spots, he tells them like -- for like the guns:

22 "Since I met Mike, he put the idea in my mind. Like
23 he told me about guns and about stuff like that. So
24 I saw his gun, I was like, oh, that's cool, I should
25 carry one for delivery too to defend myself, and I

1 asked him about guns."

2 Mr. Hamzeh tells them:

3 "After this, I was sitting, like staying home, not
4 sleeping, I couldn't sleep. I was thinking about
5 this all the time, like I'm allowed to do this? Is
6 this okay?"

7 He's -- what he clearly communicates and what is
8 demonstrated in the recorded statement to Mike and Steve is
9 that he is torn up about this. He's torn up about it because
10 his moral compass is straight. Theirs is not and they've been
11 exploiting him for these two months. He is absolutely adamant
12 that he won't do it.

13 How Mr. Kanter can suggest that it's about being
14 caught is beyond me when you read the words of that -- of that
15 recorded statement when he's talking to Mike and Steve. What
16 he's doing is that he's using every bit of persuasion with
17 these people because he knows it's wrong. He knows it's
18 morally wrong, he knows it's against his religion, and he wants
19 -- he's using those things. He's also telling them that you'll
20 get caught because he knows that's another way to persuade them
21 to do the right thing. And I think, frankly, when he gets the
22 guns, that that's a lesser evil that's going to keep -- that
23 will pacify these folks because they keep on pushing, pushing,
24 pushing during this -- during this argument -- during the
25 discussion.

1 I don't understand the notion of going to the imam
2 being a negative thing when he goes there to support with his
3 supposed friends what he's doing. Because he says over and
4 over, come see the imam with me. They respond by saying, why
5 did you go see him, we told you not to. They're trying to
6 isolate Mr. Hamzeh so that all he hears is their words so he
7 doesn't get good advice, so he doesn't do the right thing.

8 I'm a little mystified by this notion of, well, he
9 was relying on his religion or he relied on his imam. If we
10 were talking about Christians, we'd be talking about what a
11 good thing that would be. It was -- why would we expect
12 anything else from that imam other than don't do this? That's
13 exactly what we would expect. It's exactly what Mr. Hamzeh
14 expected, and that's what he told -- said in his after -- his
15 interview afterwards. At one juncture he says -- he says that
16 if he hadn't gotten the right word from him, he would have
17 looked for another one, but he fully expected that that's what
18 he was going to get because he was struggling with this issue.
19 He went to the imam so he could get his friends to see the
20 imam.

21 That he called the second one wasn't -- wasn't at his
22 friends' instigation. It was his suggestion so he could prove
23 to them that he was right in this -- in this situation.

24 We have before his arrest -- as I said earlier, he's
25 telling Steve that Mike is brainwashing him and has been

1 showing him these videos for a month, so it's not something
2 that Mr. Hamzeh found on his own.

3 In terms of another -- one more thing in terms of
4 Mr. Hamzeh's state of mind, and we did submit the psychological
5 report of Dr. Robbins, who did not believe that Mr. Hamzeh
6 posed a -- posed a danger. What the Government hasn't shown is
7 that -- again, there's nothing before September 2015. Where's
8 the evidence that Mr. -- Mr. Hamzeh desires to harm anyone
9 moving forward? It's completely -- it's completely absent. I
10 couldn't find the section about his concern not being police.
11 I don't believe him to say -- and he was completely respectful
12 during this interview, is one thing to note, with the police,
13 but I don't understand him to say his concern is not with the
14 police. I think he's saying, I'm going to do what's moral
15 because that's right for my religion. It's not that he's not
16 concerned with police, but he's going to do the right thing
17 because that's consistent with his religion, and he knows at
18 that point that the right thing is not to do anything like an
19 attack.

20 In terms of entrapment, again, the Court well knows
21 predisposition is something that the Government has to prove
22 beyond a reasonable doubt. That's difficult when there's
23 nothing going on before these informants get into his life.
24 And the other thing is the -- is the Government giving any
25 inducement. And they're doing that by their persistence, by

1 repeatedly going back to him and asking him the same stupid
2 questions over and over again, by offering him a machine gun
3 for a fraction of the price that it would -- that it would
4 cost, by isolating him, by only having these two informants get
5 in his ear over -- over and over again.

6 And again, that's what we know, based on what's
7 recorded. Why these things -- why the FBI stops recording
8 these conversations when the main event takes place, why is
9 that? When they are -- when this thing has come to a
10 standstill and then the recordings come to a stop before being
11 resuscitated. That's completely unexplained by Mr. Kanter, who
12 wants -- again, wants doubt during that period of time. When
13 they had the opportunity to record it, he wants that doubt
14 resolved against Mr. Hamzeh, and that's what the case law says
15 we cannot do, is that doubt has to be resolved in favor of
16 Mr. Hamzeh. That's particularly true when it was within the
17 FBI's means to record that at that time.

18 One moment, Your Honor.

19 **THE COURT:** Sure.

20 **(Pause)**

21 **MR. ALBEE:** And last, this is in our original brief,
22 Judge, at page 31, where we summarize some recordings from
23 January 19th, and at that time, again, Mr. Hamzeh, not knowing
24 he's recorded, told Steve and someone else that Mike had come
25 to him two weeks earlier and started talking about the Masonic

1 Temple and how the Masons spread negative propaganda about
2 Islam and the prophet Muhammad.

3 As the conversation continued, he again described how
4 Mike had approached him a week or two earlier and began
5 denigrating the Masons. He said Mike, after bearing his soul
6 about his life being in ruins, had told Hamzeh the Freemasons
7 were ISIS, our enemies, anti-Islam, and always tarnishing the
8 prophet's image. And then after that, he said he's not to be
9 trusted and the guy brainwashes you.

10 Finally, he says that Mike was the one who came up
11 with the idea of attacking the Masonic Center. Again, all
12 recorded at a time when he had no idea that he was being
13 recorded or that that would be potentially later to his
14 benefit. And why Mike wasn't recording those conversations or
15 that developed, I think is some of the strongest evidence that
16 Mr. Hamzeh was entrapped as to that. We have the December
17 conversations which show he was entrapped as to the gun.

18 So, Judge, for all those reasons, again,
19 considering -- considering guidelines in this case, the
20 viability of the entrapment defense, viability -- I'm not --
21 we're not claiming the magistrate judge said we win, but he's
22 saying it's feasible. I mean, he recognizes that there's
23 limited information about predisposition, there's -- there's
24 clearly plenty of evidence of inducement that's in the
25 transcripts that have been submitted and the evidence already

1 submitted, 64 surveillance times show that Mr. Hamzeh on his
2 own isn't doing anything, as does the search of his house, the
3 search of his computer. We have conditions that are strict
4 that we have proposed that would ensure the safety -- the
5 safety of the community. There's absolutely nothing to
6 indicate that Mr. Hamzeh, without the influence of these two
7 people, would ever do anything -- would ever do anything that
8 would be problematic on pretrial release.

9 **THE COURT:** Thank you, Mr. Albee. I want to start
10 out by saying that I'm going to give you a ruling this
11 afternoon, and I want to be clear that I wouldn't probably,
12 under normal circumstances, in a case like this do that,
13 because there's a lot of information here. We've listened to a
14 lot of it and there's a lot more that hasn't even been brought
15 up today that's in the moving papers, in the transcripts, and
16 I'm sure there's more in the discovery that no one's even --
17 it's not on the docket.

18 The reason that I am in a position to give a ruling
19 today is because, as the parties have pointed out and I think
20 I've commented on in allowing some brief filings before the
21 hearing, that there has been a tremendous amount already filed.
22 I have the benefit, I suppose, in terms of expediency, of
23 seeing everything that was filed before Judge Jones. I have
24 the benefit of seeing the transcript of the hearing in front of
25 Judge Jones. I have the benefit of Judge Jones' decision. And

1 by using the term "benefit," I simply mean that that puts me in
2 a different position in terms of having information than I
3 would be in if this was the first time that I had heard any of
4 this.

5 The second thing that I want to note, and I want to
6 be very clear about this with greatest respect to both of the
7 parties, and I do mean that, I am not proceeding on this
8 hearing on the belief or the assumption that Mr. Hamzeh would
9 do anything other than show respect for any order that this
10 Court might issue. I have no evidence in front of me to
11 indicate to the contrary. I have no reason to think from
12 anything that I've seen in any of the transcripts relating to
13 the hearing in front of Judge Jones that Mr. Hamzeh has done
14 anything other than act respectfully when he's been in court or
15 that he did anything other than act respectfully when he was
16 interviewed after he was arrested.

17 So I appreciate what Mr. Kanter was arguing with
18 regard to some of the statements that Mr. Hamzeh was recorded
19 as making, but I don't interpret any of those statements, and I
20 think it would be highly inappropriate of me to make a decision
21 on some sort of assumption that Mr. Hamzeh was going to be
22 disrespectful of any order that I might issue, and I am not
23 assuming that and I'm not proceeding on that basis.

24 The third thing that I want to point to is something
25 that -- this case is unusual in many ways, but I want to point

1 out one thing that's critical to note. Both of the attorneys
2 have talked extensively about the standards that apply, and I
3 just want to articulate them clearly because I think there are
4 a couple of places here where it's a little bit confusing or
5 contradictory or different to get one's head around, for me as
6 well as anybody else.

7 The statute that I am proceeding under is 18 U.S.C.
8 3145(b). That statute says that if a person is ordered
9 detained by a magistrate judge or some other sorts of people,
10 the person may file with the court that has original
11 jurisdiction over the offense, a motion for revocation or
12 amendment of that order, and the motion must be determined
13 promptly, or shall be determined promptly. That's a directive
14 to me, that I have to make a prompt decision. So because Judge
15 Jones ordered that Mr. Hamzeh should be detained, he filed that
16 motion with me. That's why we're here.

17 But the next piece I think can be very confusing, at
18 least it often is to me. Seventh Circuit case law and case law
19 from this District indicates that I have to conduct a de novo
20 review of Judge Jones' decision. De novo, in some respects,
21 makes it sound like, okay, Judge, pretend like you don't know
22 anything, go back and start from the very beginning, pretend
23 like you've never heard of anything that Judge Jones said,
24 pretend like you've never heard any of this before and start
25 from square one.

1 That's not exactly what the law means by de novo.
2 What the law means by de novo is that even though Judge Jones
3 has already issued a reasoned decision, I don't have to defer
4 to it. I guess in technical terms, oh, that decision no
5 deference, I'm not required to defer to it. It does not mean
6 that I can't and shouldn't review it. It doesn't mean that
7 what is in that decision may not be something that I agree or
8 disagree with. It simply means that I don't have to defer to
9 it. I could have come in here and not read it and simply made
10 my own determination without seeing what Judge Jones wrote and
11 what he reasoned.

12 I didn't do that. I didn't think that was
13 appropriate. I'm being asked to consider whether or not to
14 revoke his order or amend his order, and so I did read it, and
15 I'll comment on that in a minute.

16 The parties have already talked about the fact
17 that -- that this is not a case that gave rise to a
18 presumption, so there's no presumption of detention. So what I
19 am left with is the typical bond standard in all of the cases
20 that come before me that don't have a presumption. Those
21 factors come from Section 3142(g) of Title 18. The Government
22 has to show by clear and convincing evidence that there's no
23 set of conditions or condition that would reasonably assure the
24 safety of the public, or the Government has to show by a
25 preponderance of the evidence, two different standards, that

1 there's no set of conditions that would reasonably assure the
2 defendant's appearance. A finding of either one of those
3 factors by either one of those standards is sufficient to
4 detain a defendant awaiting trial. I don't have to find both.
5 That is from the United States versus Hester, which is a
6 Northern District of Illinois case from January of 2011, which
7 cites to the Daniels decision from the Seventh Circuit.

8 Now, the parties went through in far more detail than
9 they did in their written pleadings the factors that I have to
10 look at under 3142(g), that they are, first of all, the nature
11 and circumstances of the offense that's charged, including
12 whether it's a crime of violence; second of all, the weight of
13 the evidence against the person; third, the person's history
14 and characteristics, including their character, physical and
15 mental condition, family ties, employment, financial resources,
16 length of residence in the community, community ties, past
17 conduct, history relating to drug or alcohol abuse, criminal
18 history, and the record concerning appearances at court
19 proceedings. And then finally, I have to take into account the
20 nature and seriousness of the danger to any person or the
21 community that could be posed if I released the defendant, or
22 at least Mr. Hamzeh.

23 So those are the factors that I have to take a look
24 at. That's the standard that I'm required to follow.

25 I want to comment briefly on a couple of things with

1 regard to Judge Jones' decision. There's been a lot of
2 argument about what Judge Jones did or didn't find. And
3 probably I've not read the decision as many times as the
4 attorneys have, but I have read it several times, and the first
5 thing I want to note is that I, like the Government, don't find
6 anything in the report or in his decision that indicates that,
7 "Mr. Hamzeh has a viable or a valid entrapment defense." The
8 line of the decision that I looked to in trying to -- when I
9 saw that asserted in the defendant's brief, the line of the
10 decision that I looked to is on page 20 of Judge Jones'
11 decision. It is the penultimate paragraph before you get to
12 the order section.

13 And what Judge Jones says is:

14 "Defense counsel has put forward an intriguing
15 entrapment argument that may, in the end, prove
16 persuasive, and the factual recitation in this
17 decision has not been tested by cross-examination."

18 All of us are trying to interpret the words of
19 someone else, but as I read that language, as I understood it,
20 Judge Jones simply was noting that the defense has expressed an
21 intent to put forward an entrapment argument, that they've
22 explained in great detail the facts that they think would
23 support that entrapment argument; and he says, as is the case
24 with many arguments that parties make, it may end up being
25 persuasive, but he's not making that decision because that's

1 not an appropriate decision for him to make, and it's not an
2 appropriate decision for me to make right now.

3 So with regard to Judge Jones having found that fact
4 or made some sort of conclusion or finding as to the validity
5 or lack thereof, the entrapment defense, I simply don't see
6 entrapment. I don't see it in this decision.

7 The second issue that the parties have talked about
8 several times is what Judge Jones concluded about whether or
9 not Mr. Hamzeh had abandoned the notion of the attack on the
10 Masonic Lodge. And I think again, the language that I look to
11 in the decision was on page 18. Mr. Kanter referred to some
12 other sections in the decision, but the one I looked to was
13 page 18, the first full paragraph at the top of the page, Judge
14 Jones says:

15 "In Mr. Hamzeh's favor, I'm convinced that he had
16 firmly resolved not to engage in an offensive attack
17 at the time he purchased the weapons."

18 Mr. Kanter emphasized the last portion of that
19 sentence, and it was the last portion of that sentence that I
20 looked to. I think Judge Jones says several times that he
21 understands that Mr. Hamzeh ended up saying to Mike and Steve,
22 not only should we not do this, but let me try to tell you all
23 the reasons that we should not do this, and that as things were
24 left at the time of the gun purchase, there wasn't any date or
25 time or anything scheduled for conducting any attack on the

1 Masonic Lodge.

2 I did not read that to say, necessarily, that
3 Mr. Hamzeh may have abandoned any plans ever. And in point of
4 fact, I think that goes to one of the real issues that Judge
5 Jones identified in his decision and that, quite frankly, has
6 been, to me, the sticking point here. This case is unusual in
7 this sense, not because of what allegedly did or didn't happen.
8 I believe what's unusual about this case is that, as Probation
9 correctly pointed out in the bond study that it prepared and as
10 Mr. Albee has emphasized any number of times, up until the time
11 that Mr. Hamzeh began talking with the informants and they
12 started recording these conversations in September of 2015,
13 Mr. Hamzeh didn't have any prior criminal history, he's clearly
14 got a very caring and supportive family, and presumably always
15 has had. He has worked, which many folks we don't see in other
16 cases as having a factor.

17 And so in almost a 180, we go from that situation to
18 a situation in which someone ends up in possession of two
19 extremely dangerous weapons and a silencer, and those weapons
20 are preceded -- the possession of those weapons is preceded by
21 the conversations that Mr. Kanter has read and the events that
22 have been described. Very frequently, under those factors in
23 the statute, when I see somebody who doesn't have a prior
24 criminal history, that's a pretty strong indicator in terms of
25 dangerousness to the community. Very frequently I see somebody

1 who has a supportive family. That is frequently an indicator
2 of whether or not someone is a danger to the community. It's
3 not a guarantee, lack of prior history is not a guarantee, but
4 those are strong indicators and often they'll weigh in favor of
5 release on some kind of condition.

6 The issue here that is troubling is one -- and where
7 I think Judge Jones was -- was focused most and where I have
8 been focused most, is the evidence that the record contains of
9 Mr. Hamzeh's inconsistency in the way he dealt with a number of
10 these issues and in the things that he expressed, particularly
11 around the Masonic Center.

12 If we go back to September of 2015, and there's been
13 a lot of discussion about all of these conversations with Mike
14 and Steve about going to Jordan, which is where, by the way,
15 Mr. Hamzeh is from, been there before. But going to Jordan or
16 going to Israel or going to Palestine and talk about doing
17 things to people in Israel, and the defense argument is that
18 that's talk, and particularly it may be talk that is generated
19 by folks who are familiar with and have lived in an intensely
20 conflict situation for a long time, and the Government's
21 argument is that that is evidence that, you know, Mr. Hamzeh
22 already had expressed a willingness to do harm and do injury to
23 other people.

24 I didn't see Judge Jones focusing a lot on that and I
25 have focused far less on that in my thoughts than the events

1 that directly surround the Masonic Lodge incident. Mr. Albee
2 is correct as far as I understand the evidence, which is after
3 all this talk about going to Jordan and after all of that,
4 there was a substantial lag time in which it appeared there was
5 nothing going on, or at least there's nothing having been
6 recorded, there's nothing up until January of 2016, there seems
7 to be some radio silence there.

8 But if we simply start by looking at January of 2016,
9 if we just start there, with none of the predecessor
10 conversations, there are some very disturbing things that I
11 don't think I can ignore, and I think that Judge Jones was
12 persuaded by these. The first is that the evidence shows
13 regardless of whose idea it was that YouTube videos somehow
14 indicating that Masons were either eating people's hearts or
15 that they were devils or that they were doing something evil,
16 that they were against Islam, those videos, apparently
17 according to both parties, seemed to have played some role in
18 Mr. Hamzeh becoming involved in what eventually led to his
19 purchasing these guns.

20 That's a concerning factor that I believe I have to
21 take into account. If one of the things that I'm called upon
22 to do is to consider someone's character and personality and
23 history in determining whether or not their future behavior is
24 likely to comply with the requirements of a Court order or
25 society's expectations, the fact that somebody can be persuaded

1 by a series of YouTube videos to start having conversations
2 about brutally killing a number of people is a factor that I
3 have to take into account.

4 There's another piece of information that occurs
5 after January 16th of 2016. The defense has said several times
6 that Mr. Hamzeh was a talker, talked a lot, talked about things
7 he was going to do or not do, and that those comments should be
8 taken with a grain of salt. And the defense has said, you
9 know, but Mr. Hamzeh didn't do anything, he didn't do any of
10 these things he said he was going to do. He didn't get on an
11 airplane and go to Jordan. He stayed here with his mother who
12 wasn't doing well. He didn't do any of these things. Except
13 that he did.

14 He did do one thing that we know for sure; in fact,
15 two. But the first one that I'm talking about is that after
16 this discussion about Masons and the impression or belief that
17 Mr. Hamzeh got that Masons somehow were against Islam or
18 against the prophet or whatever they might be, he did take the
19 next step of actually going to the Masonic Temple and touring
20 it, and -- and not just swinging by to look at the outside of
21 it.

22 And by the way, as an aside, the fact that it happens
23 to be near here or not near here I don't think is relevant.
24 Perhaps the fact that it's in a large urban area may be more
25 relevant.

1 But went in, got a comprehensive tour, got fairly
2 detailed and substantial information about how frequently the
3 meetings took place, how many people usually attended each
4 meeting as a routine, where the various entrances or the floor
5 plan, the layout, where did receptionist sit, how many people
6 were there, there's an elevator, how many floors are in this
7 building, where does the elevator go, where do the meetings
8 take place, from the ground floor, on a higher floor. That's
9 not information that someone collects if someone is going to
10 visit a site as a cultural point of interest. And in fact,
11 Mr. Hamzeh's recorded conversations don't give any indication
12 that that was the reason for going to some Masonic Temple.

13 After that visit, another thing takes place, another
14 step takes place. Mr. Kanter read into the record Mr. Hamzeh's
15 detailed comments about how the alleged attack would take
16 place, down to who would stand where; down to how many times a
17 receptionist should be shot and then how her body should be
18 positioned to make sure that if anybody comes -- came in, it
19 would look as if she were sleeping; down to what the person
20 upstairs was responsible for as opposed to what the person
21 downstairs was responsible for; down to making certain that
22 everybody understood how important it was to have silencers,
23 because if you didn't have a silencer, if you began firing
24 indiscriminately; without one, you'd be immediately discovered.

25 To the extent that I looked at conversations prior to

1 January 2016 and considered them relevant, the main thing that
2 I thought -- the main thing that struck me about the
3 conversations about this attack were that they were extremely
4 detailed compared to some of the other conversations that were
5 recorded. The other conversations prior to January 2016 were
6 more general, you know, if I go to Israel and if I got ahold of
7 a gun I'd do this, or if, if, if, if, if. These were detailed
8 plans, and chilling detailed plans, that thought through
9 various scenarios.

10 There's been a lot of discussion about who was in
11 charge just around this incident, and I understand the
12 defense's argument about entrapment, and I'll get to that in a
13 second. But during that conversation, Mr. Hamzeh was doing the
14 talking. Mr. Hamzeh was telling everybody else how this thing
15 had to play out. And indeed, in his post-arrest statement,
16 when he was talking to the officers or the agents who arrested
17 him, he again emphasized that he was in charge, that he was the
18 person who was giving the directions. The defense has argued
19 that maybe Mr. Hamzeh thought he was in charge, but he had been
20 under the influence of these two informants for a long period
21 of time, and really he wasn't pulling the strings the way he
22 thought he was, the two informants were pulling the strings.
23 That, I think, is a question that the jury will have to decide
24 obviously among others if the entrapment defense is submitted,
25 but at least I think that that argument is beside the point.

1 Mr. Hamzeh appears to have believed and acted as if he were in
2 charge, even up to the date after he was arrested.

3 The next thing that happens is that -- that
4 Mr. Hamzeh decides to consult with an imam here in Milwaukee.
5 There are obviously different interpretations that one can put
6 on that, was he consulting with the imam because he needed a
7 way to get out of this, and to have an authority who says, no,
8 you're not supposed to do that would give him the ability to
9 argue with the informants, I think that's one of the arguments
10 perhaps that the defense has handed up, as well as seeking
11 spiritual guidance and seeking assistance in easing his own
12 troubled mind.

13 And, you know, I don't know what was in Mr. Hamzeh's
14 head, but to Judge Jones' point, this is not a situation in
15 which the idea of a brutal mass shooting was raised and
16 Mr. Hamzeh said are you out of your mind, are you out of your
17 mind, get away from me, I'm never associating myself with you
18 again; you talk to me again, and I'm going to go tell the
19 police what it is you're talking about here. That wasn't the
20 reaction. The reaction was that one can -- actually, if we're
21 talking about different interpretations, one can look at
22 Mr. Hamzeh's visit to the imam -- and I think to Mr. Albee's
23 point, this may be the negative context, this is someone who's
24 seriously considering doing a horrifying thing, considering it
25 so seriously that before he commits himself to the completion

1 of the act, he goes to his most trusted source in terms of his
2 religious beliefs.

3 There's a sense in which that's an indication that
4 Mr. Hamzeh was really thinking about this, or certainly at
5 least he believed other people were really thinking about it,
6 and he took steps to try to settle himself. Judge Jones said
7 that it shouldn't take the persuasion of two influential
8 religious leaders to convince somebody that going into a closed
9 room and killing up to 30 people isn't a good thing.

10 I think that was Judge Jones' way of saying, perhaps,
11 so you sort of thought this was a good thing until you were
12 told otherwise? And even after the last act that we have is
13 that even after, for whatever reason it may have been, whether
14 it was because he thought he was going to get caught or because
15 he never planned to do it in the first place or because the
16 imams both advised him that this would be haram, even after all
17 of that, Mr. Hamzeh still goes through with the purchase of the
18 guns, or at least the gun that he was attempting to purchase.
19 I realize there will likely be a dispute over that at trial as
20 well.

21 And again, there's argument about was he buying them
22 for future acts, was he buying them just in case, was he buying
23 them -- that, again, is a decision for the jury to make. But
24 it is another step in what has been a process of talking about
25 doing a terrible thing. This is not a terrorism case. I

1 understand that. It has not been charged as a terrorism case,
2 for whatever reason. Mr. Kanter gave one reason. It hasn't
3 been charged as a terrorism case. It is a gun possession case,
4 I absolutely agree.

5 But let me posit this: We have, as most people in
6 this room know, there's a statute that prohibits a person
7 that's been convicted of a felony from having a gun, from
8 possessing a gun, and that's illegal. It's a crime of what we
9 call status. If you're a felon, you can't have a gun. And yet
10 quite frequently I see people who have been arrested for being
11 a felon in possession, one of the first things their attorney
12 might say to me, understandably, is, but Judge, he didn't use
13 it on anybody, he didn't talk about using it on anybody, he
14 didn't point it at anybody, he kept it in a box in his bedroom.
15 It was still illegal for him to have the gun, but one of the
16 things that people will argue at a detention hearing is, but
17 Judge, there's no evidence he was going to do anything with it,
18 there's no evidence that he was going to hurt anybody with it,
19 and so that shouldn't be -- just the fact that he had the gun
20 shouldn't go toward keeping him detained.

21 And I listen to those arguments, of course, and
22 sometimes I agree and sometimes I don't, depending on the
23 circumstances. Here is a case where we don't simply have gun
24 possession, or in this case possession of a firearm that one
25 must report and pay tax on, and the transfer tax wasn't paid.

1 This is possession of a gun, for however briefly, and briefly
2 because Mr. Hamzeh was arrested immediately upon putting the
3 guns in the back of the car, so we don't know one way or the
4 other what would have happened to them if Mr. Hamzeh hadn't
5 been arrested, but this is a possession case that is preceded
6 by the events that I've just described.

7 So even if one sets aside whatever happened prior to
8 January 16th and whatever conversations there were prior to
9 January 16th, we are left with a series of statements and
10 actions, not just talk, but action indicating that -- that
11 something far more problematic than simply having a firearm in
12 one's possession and not paying the transfer tax was something
13 that Mr. Hamzeh was contemplating. And that goes directly to
14 one of the factors that I have to consider in the statute,
15 which is someone's disposition or someone's character in terms
16 of whether or not one can rely on them not to engage in
17 dangerous activity in the future. And again, this goes to
18 danger to the community.

19 The fact that Mr. Hamzeh has said he's going to do
20 things and then doesn't, said he's not going to do things and
21 then does, said he doesn't believe that -- that people ought to
22 participate in the attack because the imams have said it was
23 wrong, and besides, we might get caught, or whatever, and then
24 goes ahead and buys the guns anyway. That, I think, those were
25 the issues that concerned Judge Jones, and those are the issues

1 that concern me. I am not here today to make a finding on
2 entrapment. In fact, I think the weight of the evidence
3 against the defendant, as the parties have pointed out, is one
4 of the weaker factors for a Court to consider.

5 However, I'll note something else, the defense has
6 turned itself inside out and done its usual extremely thorough
7 job of providing not just the facts of the case and going
8 through that, but also providing a lot of information with
9 regard to psychological studies and psychiatric studies in
10 support of the entrapment argument.

11 For example, the defense has referred to the
12 phenomenon of the Stockholm syndrome, which many of us are
13 familiar with, given some past high-profile kidnapping cases,
14 in which a kidnapping victim, when they're exposed to their
15 kidnapper long enough, starts to have some sort of a strange
16 almost bond with that kidnapper, starts to empathize with that
17 kidnapper, eventually may start to do what the kidnapper tells
18 them to. The Patty Hearst case is probably one of the most
19 prominent examples of that.

20 The electric shock treatments, those tests that
21 Mr. Albee mentioned where someone receives a shock if they do
22 something that the person on the other end of the button
23 doesn't approve of and eventually that person learns to try to
24 avoid the shock, and so they start to try to please the person
25 on the other side of the buzzer in order to avoid that shock.

1 The -- those are certainly studies and there are many
2 others that show that people can be influenced to do things
3 they wouldn't otherwise do with enough pressure, but I note
4 that in those two instances in particular, victims of the
5 Stockholm syndrome are, in fact, victims, they have been
6 kidnapped, they've been held in custody, they've been deprived
7 of contact with their family, their friends and their
8 communities. The electric shock people, to a much lesser
9 extent, are in fear or at risk of harm to themselves and
10 danger, and they're trying to avoid it and they're trying to do
11 whatever they can to avoid that danger and that risk.

12 Perhaps more on point, but still I think not, is the
13 Swarthmore study that the defense referred to and in its
14 written pleadings, and I don't mean to be academic, but I think
15 it bears discussing, where college students were shown two
16 lines, and they said the college students were asked which of
17 these lines is longer; and left to their own devices all by
18 themselves in a room, 90 percent of the college students or 95,
19 I can't remember, it was a high percentage, correctly picked
20 the longer line from the shorter one. But if you brought two
21 or three students into the room and said to everybody, which
22 line is the longest, that certainty decreased, and more and
23 more and more, the students started to get it wrong because,
24 perhaps, student A says, oh, the line on the right is
25 definitely longer, and then student B goes, well, are you sure

1 because they look pretty close to me, and pretty soon people
2 start to get tilted off their axes. So that was another study
3 that the defense pointed out in arguing that people succumb to
4 influence.

5 I indicated that that case might more be on point,
6 and reason I said it might more be on point is because I don't
7 have any evidence in front of me, even after all of this
8 briefing, all of these transcripts, all -- I don't have any
9 evidence in front of me that Steve or Mike were threatening
10 Mr. Hamzeh, that they took him into custody, that they told him
11 they were going to do something bad to him if he didn't
12 participate in these conversations.

13 I understand the defense's argument that having
14 somebody nag you and nag you and nag you and nag you over and
15 over again, may eventually sort of weaken your disposition
16 somewhat. All you need to do is have a teenager to learn that.
17 But I don't have any indication that there was anything going
18 on here that Mike and Steve were doing, other than raising
19 issues over and over again, raising topics over and over again,
20 talking about them over and over again.

21 In point of fact, as the defense has pointed out,
22 contrary to being sort of cowed by Steve and Mike, Mr. Hamzeh
23 seems to have gotten frustrated, particularly with Mike, and
24 angry with Mike on several occasions, and said, you know, why
25 do you keep asking me the same thing over and over again, just

1 shut up about it, stop. This doesn't seem to be the behavior
2 of somebody who felt like if I don't go along with these guys,
3 something bad's going to happen to me.

4 The same thing when he consulted with the imams and
5 then went back to Steve and Mike and said, no, I don't want to
6 do this anymore, I don't believe we ought to do this anymore,
7 there's no indication that this was something he was scared to
8 do or concerned about doing, rather he was trying to exercise
9 his persuasion.

10 The reason that I think the Swarthmore study is also
11 off point is because there's a difference, I believe, in trying
12 to convince somebody succumbing to influence that maybe your
13 powers of deduction and persuasion are not as good as you think
14 they are. In other words, that someone's questioning the
15 metric by which you make a decision. If I guess how far away
16 that door is, I think I'm pretty darn right, until somebody
17 else says to me, I don't think you have a very good sense of
18 depth.

19 This situation is not a neutral question that
20 somebody's trying to determine whether or not they're
21 perceiving things correctly, physical things. This situation,
22 as Judge Jones pointed out, has a different component, and that
23 is a moral and ethical component. To argue that somebody can
24 convince you that one line looks shorter than the other if they
25 just kind of talk to you long enough is a very different

1 argument than saying somebody can convince you even if you
2 have, as Mr. Albee said, a straight moral compass that killing
3 a large number of people is right if they just talk to you long
4 enough.

5 So I appreciate the studies and I appreciate the
6 point, and I'm not making a decision today, because I'm not in
7 a position to, about whether or not I will allow an entrapment
8 defense. That's an issue for later. But in considering what
9 the defense has focused a great deal of its argument on, I
10 raise those issues in that regard.

11 So for all of those reasons, I do find that even
12 though Mr. Hamzeh has no prior history and even though I know
13 he has family and community support for -- which I'm sure he is
14 grateful and anybody would be, and I realize this case is
15 unusual in that sense, even though I understand that this is
16 not charged as a terrorism case and is not being -- I don't
17 know how it's being prosecuted -- if it's being prosecuted that
18 way, but it's certainly not being charged that way.

19 I think the judgment that's shown here, the
20 willingness to engage in this kind of detailed planning,
21 including going to the location, the willingness to have the
22 kind of detailed instruction conference, if you will, that
23 Mr. Hamzeh had with Steve and Mike about how this would play
24 out, the willingness to go ahead and purchase the guns, even
25 after saying, well, we're not going to go through with it at

1 this place at this time, although it was not worded that way,
2 and I don't mean to say it was Those things are factors that
3 Judge Jones had to take into account and that I have to take
4 into account in determining dangerousness to the community.

5 A couple of other things, the defense has argued that
6 under the sentencing guidelines, that the sentencing guidelines
7 are 24 to 33 months or somewhere in that neighborhood, and so
8 that he may have served his -- Mr. Hamzeh may have served his
9 time by the time we get to the jury, it is not lost on me the
10 concern that the defense has and that every judge ought to
11 have, that if after trial Mr. Hamzeh is acquitted, he will have
12 sat in custody for two years for something that the jury found
13 he didn't do.

14 Mr. Kanter pointed out the fact that at one point in
15 my career I was a prosecutor and so I know things about how
16 prosecutors work. There was another point in my career in
17 which I was a defense attorney, and as a defense attorney, I
18 suspect I'm not alone in having lost a lot of sleep over the
19 course of my career worrying that if I did not do my job right
20 and if I didn't do it well, some man or woman would end up
21 being in custody for something they did not do. So that point
22 is not lost on me, and it troubles me, as well it should, but I
23 also have to consider the other factors, and as I've indicated,
24 I've stated what some of those factors are that concern me.

25 Finally, the Government has also argued risk of

1 flight because Mr. Hamzeh has -- still has family in Jordan and
2 has been overseas before and particularly to the Middle East
3 before and that there's no combination of conditions that would
4 ensure that he would stay. The defense has put forward several
5 combinations -- several conditions, including location
6 monitoring, including the fact that his parents are willing to
7 act as a third-party custodian for him, a number of other --
8 and I think Mr. Albee's right -- stringent conditions, and I do
9 have to take those into account.

10 But again, that circles back to the issue that I raised
11 earlier, which is a concern about judgment. It's easy to
12 argue, and I think the defense has, that it would be ridiculous
13 and stupid now for Mr. Hamzeh to try to go out and commit a
14 crime or try to go to O'Hare and get on an airplane, because
15 given his status, he would probably be caught before he could
16 get anywhere, and people know who he is and people know about
17 his case.

18 It would -- but there are many people who probably
19 also would argue it's pretty foolish to go visit a Masonic
20 temple and collect all the information about it and then talk
21 to people about going in and killing everyone who's in there,
22 and go so far as to negotiate the purchase of weapons and then
23 to actually buy them, even when the immediate plans have fallen
24 through.

25 That's what I keep circling back to, is -- is that

1 kind of behavior, what I have seen and heard on the recording
2 and on -- in the transcripts and in the pleadings -- that is
3 the kind of behavior that should, I think, cause a judge to
4 question. If I let someone out on the assumption that they
5 won't do anything foolish and that they'll comply with all the
6 requirements, how safe is it for me to rely on that assumption?
7 And for any judge it's always an assumption. There's no
8 guarantee that if someone is released, the next day they won't
9 go out and do something terrible or make it off to the Ukraine;
10 but it's a sliding scale and I have to take into account all of
11 the factors in the statute in looking at that sliding scale and
12 weight those factors as I see appropriate, and here I agree
13 with Judge Jones that those factors weigh in favor of continued
14 detention pending trial.

15 I note, however, as the parties have indicated, that
16 the trial is coming up shortly. We're two months away from
17 trial. The parties have already submitted a stipulation, and I
18 appreciate that in terms of timing for submit -- making
19 pretrial submissions, and I plan to issue an order approving
20 that stipulation, and I thank you all for working together on
21 that. But the one thing that I did want to address briefly
22 today while we're all together, is both parties have alluded to
23 motions that they'll be filing or responding to around some of
24 the legal issues in this case, including whether or not
25 presenting the entrapment defense -- whether I'll allow

1 presenting the entrapment defense.

2 I want to have time to look at those motions and to
3 look at the responses, and unlike a typical motion in limine,
4 which parties can submit a few days before trial and I can look
5 at and I can make an evidentiary ruling either at trial or
6 final pretrial conference, these are weightier issues. It's
7 evident that these are weightier issues and they're issues of
8 more concern to the parties, and so I wanted to take just a
9 couple of minutes and ask, and perhaps I'll start with
10 Mr. Albee. I don't want to make you be doing 8,000 things, but
11 at the same time, I'm hoping to get whatever motions are filed
12 in time for the Government to respond, for you to reply if you
13 want to, and for me to give them due consideration.

14 So Mr. Albee, given where we are now, do you have a
15 sense of when you might be prepared to file any motions you're
16 prepared -- you're thinking about filing?

17 **MR. ALBEE:** Well, it's kind of a broad question --

18 **THE COURT:** I know.

19 **MR. ALBEE:** -- in a sense that there's a -- and
20 there's a lot of different kinds of motions. We received a
21 small bit of discovery on Friday, I think it was, and it's an
22 emphasis on "small" in our view; so we do have some concerns
23 about the discovery that's been produced, and we would hope to,
24 I guess, file motions -- I think we still haven't really had a
25 chance to talk to the Government about that entirely. I don't

1 want to dump this all on the Government, and we've been working
2 very collegially going back and forth, I'm just -- you know,
3 and --

4 **THE COURT:** Well, maybe the other thing I should do,
5 Mr. Albee, sorry, to save you any more sort of heading where I
6 think --

7 **MR. ALBEE:** Yeah.

8 **THE COURT:** -- you're heading, is ask you all to talk
9 about it.

10 **MR. ALBEE:** That would probably be the better -- the
11 better -- better idea. Because that's one issue and that
12 probably relates to, you know, putting together some of the
13 other issues in this case. I think both -- both parties too --
14 the transcripts are an onerous process and both parties have
15 been working hard on that, but I think both parties also see
16 we've got a little ways to go on that, so we'll keep talking.

17 And I don't mean to -- the -- again, my complaints
18 about what we got last week, it's not the end of the process.
19 We've -- you know, and we've been in contact the whole time, so
20 I guess that probably makes more sense if we're -- try to work
21 it out for the time being and then propose something to the
22 Court.

23 **THE COURT:** And I appreciate that. And I -- I mean,
24 I should say, again, having been in both pairs of shoes, and to
25 your earlier reference, Mr. Albee, I know what a difficult

1 thing it is to try to work with somebody to prepare for trial
2 when they are in custody, and just the fact that there are
3 tapes and that they're in a different language makes it all
4 that much harder, and I'm not insensitive to that as well, I
5 understand that. And so I'm perfectly happy -- what I'm,
6 basically, looking for is a bit of heads up only so that I can
7 plan to have sufficient time to do what I hope is a thorough
8 job of going through all of your arguments, so that's all I'm
9 asking.

10 **MR. ALBEE:** Yeah. No, we'll do everything we can on
11 that front. Thank you, Judge.

12 **THE COURT:** Thank you. Mr. Kanter, is there anything
13 from the Government today that we need to take up other than
14 what we've already discussed?

15 **MR. KANTER:** There is not, thank you.

16 **THE COURT:** Ms. Cyrak, anything from Probation?

17 **U.S. PRETRIAL OFFICER CYRAK:** No, Your Honor, thank
18 you.

19 **MR. ALBEE:** Judge, I did have -- there was one other
20 thing I had intended to bring up. I would expect that we'll
21 ask the Court to submit a jury questionnaire. And again, we'll
22 try to work with the Government to get an agreement on
23 questions, but I was wondering if the Court had any idea in
24 terms of timing of how far in advance of trial would be --
25 would be necessary, just so we can work with the Government and

1 get that done in a timely manner.

2 **THE COURT:** Yeah. And -- and I can try to nail this
3 down with the jury coordinator when I get off the bench to make
4 sure, but I would say at least three weeks ahead of the trial
5 date. I know that, you know, I mean, it -- because at two
6 weeks they're starting to decide how many folks to bring in for
7 the voir dire, depending on what's on the calendar, so if
8 there's a way to get it by that point, but let me -- I'll
9 double check and I'll let both of you all know what that timing
10 should be optimally.

11 **MR. ALBEE:** And if I could just talk to Mr. Bugni for
12 one second.

13 **THE COURT:** Uh-huh.

14 (Pause)

15 **MR. ALBEE:** All right, nothing else, thank you.

16 **THE COURT:** Okay. All right, thank you, everyone.
17 Thank you to all the people who came to support Mr. Hamzeh
18 today.

19 **THE CLERK:** All rise.

20 (Hearing adjourned at 4:10 p.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is positioned above a horizontal line.

January 12, 2018

TONI HUDSON, TRANSCRIBER